IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS -
MARSHALL DIVISION

ARTHUR MITCHELL, **Plaintiff,** **v.** **THE CITY OF NAPLES, DANNY MILLS, in his Individual and Official Capacities, and DENNIS CHARTIER, in his Individual and Official Capacities,** **Defendants.**	**CIVIL ACTION NO. 2:16-cv-1039** **JURY TRIAL DEMANDED**

PLAINTIFF'S ORIGINAL COMPLAINT

Plaintiff Arthur Mitchell ("Mitchell") brings this action against Defendant the City of Naples ("City") to address race discrimination by the City in violation of 42 U.S.C. § 1981, made applicable through 42 U.S.C. § 1983; the Equal Protection Clause of the Fourteenth Amendment, made applicable through 42 U.S.C. § 1983.[1] Plaintiff also brings this action against Defendants Danny Mills, former Mayor of the City of Naples, and Dennis Chartier, current Mayor of the City of Naples, for race discrimination and deprivation of civil rights under color of state law, in violation of 42 U.S.C. § 1981, made applicable through 42 U.S.C. § 1983; and the Equal Protection Clause of the Fourteenth Amendment, made applicable through 42 U.S.C. § 1983. In support of his Complaint, Plaintiff would show the Court as follows:

1. INTRODUCTION

1.1. Plaintiff demands a jury trial in this case as to any and all issues triable to a jury.

[1] Plaintiff has filed a Charge of Discrimination with the Equal Employment Opportunity Commission ("EEOC") and the Texas Workforce Commission – Civil Rights Division ("TWC-CRD"). Once Plaintiff receives a Right to Sue from these agencies, he will amend this Complaint to include these claims.

1.2. Plaintiff is African American. Plaintiff has been employed by the City of Naples as City Worker since April 2007.

1.3. While employed by the City of Naples, Plaintiff has been and continues to be paid less than similarly situated Caucasian coworkers with equal or lesser experience and qualifications than Plaintiff.

2. JURISDICTION AND VENUE

2.1. The Court has jurisdiction over the subject matter pursuant to 28 U.S.C. § 1331. The jurisdiction of this Court is invoked pursuant to 42 U.S.C. § 1981, Title VII, the Fourteenth Amendment of the United States Constitution, and the subsequent remedial legislation enacted pursuant thereto, as codified at 42 U.S.C. § 1983.

2.2. Venue is appropriate in the United States District Court for the Eastern District of Texas because the events that gave rise to this cause of action occurred in Morris County, Texas, within this District.

3. PARTIES

3.1. Plaintiff Arthur Mitchell is a resident of Naples, Morris County, Texas.

3.2. Defendant City of Naples is a municipality in Morris County, Texas. It may be served with process by service on Mayor Dennis Chartier at 205 Main St., Naples, Texas 75568.

3.3. Defendant Danny Mills is an individual being sued in his individual and official capacity as former Mayor of the City of Naples. He may be served with process at his principal place of business located at 101 Atlene, Naples, Texas 75568.

3.4. Defendant Dennis Chartier is an individual being sued in his individual and official capacity as current Mayor of the City of Naples. He may be served with process at his principal place of business located at 205 Main St., Naples, Texas 75568.

4. FACTS

4.1. Plaintiff Mitchell is African American. Plaintiff began his employment as City Worker for the City of Naples' Public Works Department in April 2007. Plaintiff is still currently employed as City Worker.

4.2. The City of Naples Public Works Department handles maintenance for the City's water, streets, and sewer.

4.3. Throughout Plaintiff's employment as City Worker, Plaintiff worked and continues to work on average 40-44 hours per week.

4.6. During Plaintiff's employment as City Worker, he gradually came to learn that Caucasian employees were being paid at substantially higher rates than African American employees performing the same work in the same position.

4.7. For instance, in May 2011, Mitchell earned $10.50 per hour doing the same job as Harry Vissering (Caucasian), who earned $15.00 per hour despite his lesser experience. In May 2013, the City hired Lloyd Devlin (Caucasian) as City Worker at a starting pay of $14.00 per hour and raised Devlin's pay to $15 per hour three months later. At the time, Mitchell was making $11.03 per hour. In February 2015, Mitchell was making $12.71 compared to Devlin's $15.45 per hour.

4.9. The pay disparity continues through the present day.

4.10. The pay disparity is not attributable to any legitimate factor. Mitchell is currently the longest serving employee on his team and trained the same Caucasian employees, including Vissering, Devlin, and others, who consistently earned $3 to $5 more per hour than Mitchell was earning for doing the same job.

4.11. Other African American employees in the Public Works Department were subjected to the same racial discrimination in pay as Plaintiff Mitchell.

4.12. Jimmie Byrd, who is African American, formerly worked for the City of Naples as City Worker in the Public Works Department from 2001 until he voluntarily quit in September 2014.

4.13. Byrd was hired by the City at $7 per hour in 2001. Over the thirteen years he worked for the City of Naples, he received small raises every so often, gradually increasing his pay to $12.30 per hour at the time he quit his job in September 2014.

4.14. Throughout his employment, Byrd also came to learn that Caucasian employees in Public Works were paid consistently more than he was. For instance, Devlin was hired at around $14 per hour. A year later Devlin received another raise, to $15 per hour. Vissering was also hired at a starting rate substantially higher than what Byrd was making at the time. James Moran (Caucasian) was hired at a starting rate of $14 per hour, while Byrd was paid $9 per hour at the time.

4.15. Hiring decisions, pay rates, and raises for City Workers were and continue to be determined by the Mayor of the City of Naples. During the period 2011 through May 2015, the Mayor was Danny Mills. Since May 2015, the current Mayor is Dennis Chartier.

4.16. The Mayor of the City of Naples is a policymaker with final authority over the pay decisions that are the subject of this lawsuit. The pay decisions at issue were made pursuant to the policy and/or custom of the City of Naples.

4.16. Plaintiff and Byrd complained previously to former Mayor Danny Mills, on multiple occasions, that they was being paid less than Caucasian employees in the Public Works Department.

4.17. Despite the complaints to the Mayor, nothing was done to raise Plaintiff's or Byrd's pay to meet their Caucasian coworkers'. It is important to note that Byrd was the longest serving employee in the Public Works Department during most of the thirteen years he worked for the City, and since Byrd's retirement, Mitchell has been the longest serving employee in the Public Works Department. On one occasion, when Byrd complained about Moran being hired at $14 per hour when he was making $9 per hour, the Mayor reduced Moran's pay in response, and Moran quit his job.

4.18. Defendants' past and continuing actions in paying Plaintiff less than similarly situated Caucasian employees violate state and federal law and constitute racial discrimination in violation of Section 1981, as applicable through Section 1983; and the Equal Protection Clause, as applicable through Section 1983.

5. CAUSES OF ACTION

A. RACE DISCRIMINATION IN VIOLATION OF SECTION 1981/ SECTION 1983.

5.1. Plaintiff incorporates by reference all preceding facts as set forth above in Paragraphs 4.1 through 4.18.

5.2. During his employment, Plaintiff was and continues to be subjected to unlawful discrimination because of his race. Plaintiff can establish that the City paid him less than it paid his Caucasian counterparts for equal or lesser work on jobs that required substantially equal or less skill, effort, responsibility, and which were to be performed under similar working conditions.

5.3. Defendants acted intentionally in paying Plaintiff less than Caucasian employees with equal or lesser qualifications and/or experience.

5.4. Defendants violated Plaintiff's civil right to be free from racial discrimination in violation of 42 U.S.C. § 1981, in violation of 42 U.S.C. § 1983.

5.5. All discriminatory acts alleged against Defendants the City of Naples, Danny Mills, and Dennis Chartier were taken under color of the laws and regulations of the State of Texas.

5.6. Defendants Danny Mills and Dennis Chartier were policy makers and final decision makers at the City with regards to the discriminatory acts alleged. All discriminatory acts alleged against Defendants were made pursuant to the policy and/or custom of the City of Naples.

5.7. Plaintiff suffered damages as a result of the unlawful discrimination, including financial losses in the past and future, as well as past and future emotional damages, and all other damages as permitted at law.

B. Race Discrimination in Violation of the Fourteenth Amendment Equal Protection Clause/ Section 1983.

5.8. Plaintiff incorporates by reference all preceding facts as set forth above in Paragraphs 4.1 through 4.18.

5.9. During his employment, Plaintiff was and continues to be subjected to unlawful discrimination because of his race. Plaintiff can establish that the City paid him less than it paid his Caucasian counterparts for equal or lesser work on jobs that required substantially equal or less skill, effort, responsibility, and which were to be performed under similar working conditions.

5.10. Defendants acted intentionally in paying Plaintiff less than Caucasian employees with equal or lesser qualifications and/or experience.

5.11. Defendants violated Plaintiff's civil right to be free from racial discrimination under the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution, in violation of 42 U.S.C. §1983.

5.12. All discriminatory acts alleged against Defendants the City of Naples, Danny Mills, and Dennis Chartier were taken under color of the laws and regulations of the State of Texas.

5.13. Defendants Danny Mills and Dennis Chartier were policy makers and final decision makers at the City with regards to the discriminatory acts alleged. All discriminatory acts alleged against Defendants were made pursuant to the policy and/or custom of the City of Naples.

5.14. Plaintiff suffered damages as a result of the unlawful discrimination, including financial losses in the past and future, as well as past and future emotional damages, and all other damages as permitted at law.

6. DAMAGES AND ATTORNEYS' FEES

6.1. As a result of Defendants' intentional and discriminatory acts described above, Plaintiff has sustained lost wages and benefits. Plaintiff sues for equitable relief, past and future wages, emotional distress damages, compensatory damages, punitive damages, liquidated damages, injunctive relief, attorneys' fees, and taxable court costs.

6.2. Defendants' actions and conduct as described herein and the resulting damage and loss to Plaintiff have necessitated Plaintiff to retain the services of SHELLIST LAZARZ SLOBIN LLP, 11 Greenway Plaza, Suite 1515, Houston, Texas 77046, in initiating this proceeding. Plaintiff seeks recovery of reasonable and necessary attorney's fees as is allowed under Section 1981 and Section 1983.

7. PRAYER

7.1. WHEREFORE, PREMISES CONSIDERED, Plaintiff respectfully prays that Defendants be cited to appear and answer, and that on final hearing of this cause Plaintiff have the following relief:

7.2. All damages which Plaintiff has sustained as a result of Defendants' conduct, including back pay, front pay, lost past and future benefits, compensatory and punitive damages;

7.3. Compensation for any and all future pecuniary losses, emotional pain and suffering, inconvenience, mental anguish, loss of enjoyment of life, and other non-pecuniary losses;

7.4. Injunctive relief;

7.5. Pre-judgment and post-judgment interest at the highest legal rate until paid;

7.6. Reasonable and necessary attorneys' fees;

7.7. Costs and expenses; and

7.9. Such other and further relief, at law or in equity, general or special to which Plaintiff may show himself justly entitled.

Respectfully submitted,

SHELLIST | LAZARZ | SLOBIN LLP

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